

Minutes of the Board of Adjustment meeting held on Monday, September 10, 2012, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Roger Ishino, Chair
Travis Nay, Vice-Chair
Rosi Haidenthaller
Preston Olsen
Tom Halliday
Chad Wilkinson, Community Development Manager
Joshua Beach, Assistant Planner
Tim Tingey, Administrative & Development Services Director
G.L. Critchfield, Deputy City Attorney
Citizens

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Roger Ishino explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

APPROVAL OF MINUTES

Rosi Haidenthaller made a motion to approve the minutes from August 13, 2012 as corrected. She mentioned that on page 9, the motion to approve the variance for Brandon Jensen failed due to not receiving a majority vote. And, the variance was therefore denied. Preston Olsen seconded the motion.

A voice vote was made. The motion passed, 5-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

CASE #1459 – KARL BENCH – 39 West 5878 South – Project #12-111

Karl and Kendyl Bench were present to represent this request. Josh Beach reviewed the location and request for a fence height variance for a fence which has been recently constructed on a corner lot. The vinyl fence is approximately 6 feet high located in the corner side yard setback area. The neighbor's driveway is located to the south on the adjacent lot within 12 feet of the boundary line between the lots. A three foot high solid fence is the maximum fence height allowed in the corner lot side yard setback area when a driveway on the adjacent lot is located within 12 feet of the property boundary in order to provide for vehicular and pedestrian safety and allow for proper visibility. Murray City Code Section 17.64.020.B: addresses fence height on a corner lot and states: Fence Height: Corner Lot: Fences, walls, hedges, or other screening material greater than three feet in height are permitted within the street side yard setback area, provided, that such fence, wall, hedge, or other screening material does not exceed six feet in height, is not adjacent to a driveway on an adjoining lot, and is not located within a triangular area formed by the property lines and a line connecting them at points twenty five (25) feet from the intersection of the property lines. If adjacent to a driveway

on an adjoining lot, the maximum fence height shall be three (3) feet if solid, or four (4) feet if an open type fence within the minimum side yard setback area of the zone. "Adjacent", as used in this chapter, means any distance from the corner lot property line to the driveway of the adjoining lot which does not exceed 12 feet. Mr. Beach explained that the adjacent neighbor, Mr. Havrilo, has expressed his opposition to this fence with concerns of visibility and safety issues. He cited an example where a variance was granted in 2010 for a property located at 5878 South Sagewood Drive. This particular variance was granted because it was associated with a secondary driveway which was abandoned in order to accommodate the fence. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance. Therefore, staff recommends denial.

Karl Bench, 39 West 5878 South, stated that the city's fence code is confusing. He stated that prior to constructing the fence, he called the city and asked if he needed to obtain a permit for the fence where he was told that he did not need a permit, but was told to build the fence to code. He looked up the fence code on the city's website and contacted his fencing company who was in agreement with his interpretation of the code meaning that the fence could be adjacent to the driveway if the fence is cut back 25 feet like on a corner for visibility. He stated that he looked around in the neighborhood where there are similar fences. Mr. Bench showed 14 pictures of other fences within a 2 block radius where there are fences that do not have the 25 foot visibility setback. He stated that his neighbor across the street was granted a variance because they chose to abandon their secondary driveway, but in fact they still park cars in that driveway. He showed a photograph of a car parked in the "abandoned" driveway. Mr. Bench stated that his rear yard is very small with a 24 foot 6 inch setback including the sidewalk area making his grass area only 16 feet. This 16 foot area is very small for his children to play. He stated that he has a black lab dog and if he is required to reduce the fence height to 3 feet, the dog will be able to get out. He stated recently a registered sex offender has moved into the neighborhood and he wishes to have the added safety with a higher fence.

Mr. Ishino asked about the photos of the fences in the neighborhood presented to the Board. He stated that one of the fences is located on Nina Way that has a 6 foot fence adjacent to a driveway.

Mr. Nay stated that staff found only one fence variance in the area, even though there may be several similar fences. Mr. Beach concurred.

Mr. Halliday stated that the city is not pro-active in pursuing fences that do not meet code, but respond to fencing complaints. He asked if at some point in time those fences will become legal nonconforming.

Mr. Wilkinson stated that if a fence is constructed that does not meet the city code; it is considered noncompliant and is not considered nonconforming. He stated that nonconforming means that at one point in time the fence met the code but because of a change in code, no longer meets the code regulations. He stated in the case where fences are installed in violation of the code, those fences are noncompliant (not legal) fences. He stated that the city does respond to citizen complaints but the city does not have the man power to actively pursue fence violations proactively.

Ms. Haidenthaller asked Mr. Bench if he has considered other options for the fence. Mr. Bench responded that he has spoken with Mr. Wilkinson who indicated that the fence could be reduced to a 3 foot height or the fence could be moved back to a 20 foot side yard setback and meet code. If the fence is moved back 20 feet, this will significantly reduce his rear yard. He stated that he grew up on a farm and when he built things on the farm, they were built to stay. He stated that when he installed the fence, each fence post is 3 feet deep and is in concrete. He stated the gate posts have a steel reinforcement and therefore it will be very difficult to remove the fence posts and gate posts.

The meeting was opened for public comment.

Dave Bench, 5898 South Sagewood Drive, stated that he is Karl's brother. He stated he installed the same type of fence across his property. He stated that when he installed his fence, an inspector came and told him that he would need to cut a 25 foot side triangular area which is what he then told Karl that he would be required to do. He stated that many of his neighbors commented that they love his fence. He stated that the fence previously on Karl Bench's property was atrocious looking, dilapidated and falling down. He stated that visibility from Karl's driveway is adequate for safety. He stated, in his opinion, the adjacent neighbor isn't opposed to the fence but is irritated with Karl Bench because when Karl was building his basement, water was flooding the basement and Karl rented a bobcat to fix the grade early in the morning hours. The neighbor then called the police on Karl Bench because he was operating the bob cat so early in the morning. He stated that the police appeared to be irritated to have been called out on this issue. He stated in his opinion, the fence complaint isn't the issue but the issue is the dispute between two neighbors and that the fence is a nice improvement from the previous fence.

Steve Havrilo, 5885 South Sagewood Drive, stated that when he is backing out of his driveway and the rear tires are on the sidewalk he cannot see west bound traffic or pedestrians due to the location of the Bench's fence which is setback 16 inches from the sidewalk. He stated the neighbors across the street set the fence back about 30 inches. He stated if his driveway was a secondary driveway, he would not be opposed to the fence variance; however, since it is his primary driveway he is concerned.

Ms. Haidenthaller asked if Mr. Bench's fence is located on the property line or if it is a few feet onto Mr. Havrilo's property. Mr. Havrilo responded Mr. Bench's fence is located at the same location as the previous fence and assumes this to be the property line. He stated the previous fence was not a 6 foot fence and was a basket weaved fence approximately 4 feet in height and was very dilapidated and needed to be propped up on occasion. He also has a dog that is kept within the fence. He stated that when the fence fell over, Mr. Bench decided to remove the fence without consulting with him and installed this vinyl fence.

Ms. Haidenthaller asked if the previous basket weaved fence was located up to the sidewalk. Mr. Havrilo responded that the previous fence was setback 10 feet from the corner of his garage and was then a horizontal slat fence (rail fence).

Kendyl Bench, 39 West 5878 South, stated their previous fence fell over multiple times which has destroyed their garden area. She stated the variance granted for the property across the street was because the hardship was the size of their back yard and was regarding their secondary driveway. She stated there are children in the neighborhood and with a small rear yard the children may play in the side yard area. This is a concern because many of the Larry H. Miller trucks drive down Sagewood Drive and is a safety concern. She showed a photo taken from the start of Steve Havrilo's driveway with a vehicle moving south bound at the intersection of Sagewood and has good visibility to the intersection. She stated that they made a triangular visibility area in this area with the existing fence to provide adequate visibility for safety. She stated there is a stop sign on the north-south road of Sagewood Drive, but not one for the east-west road.

Joel Dunn, 68 West 5878 South, stated he is the adjacent neighbor to the house that was granted the fence variance for the secondary driveway. He stated that his neighbors do use their secondary driveway for their children's vehicles when they come to visit. Mr. Dunn stated that he and his wife walk around the neighborhood regularly and, in his opinion; the fence installed by the Bench's does not present a visibility issue other than the boat being located on the driveway.

Mr. Havrilo stated that the photo submitted by Ms. Bench was taken while standing. He stated that when backing up a vehicle in the driveway the visibility is at lower height. He stated that the boat is not that big of a deal and he cannot see around the corner when backing out of his driveway. He submitted three photos of the visibility while in his car which was located with the tires on the car centered on the driveway and the cab centered over the sidewalk. When the tires are centered over the sidewalk he can see all the way down the sidewalk to the intersection.

The public comment portion for this item was closed.

Ms. Haidenthaller stated that the applicants have attempted to maximize their back yard space by the way they constructed the fence. They have attempted to meet the code and whether they interpreted the fencing code incorrectly, she does not know. However, she finds it difficult finding how this request would meet the state criteria for granting a variance.

Mr. Halliday stated that he agrees with Ms. Haidenthaller's comments. However, he stated that when people buy a corner lot they get a nice open area on the front and side of the home, but it does make it more difficult for privacy and fencing regulations. He asked Mr. Wilkinson to explain the fencing regulations in more detail with regards to corner lots. Mr. Wilkinson explained the fencing code for corner lots and showed the diagrams which are contained in the fencing code. Mr. Wilkinson stated the 25 foot triangular visibility area does not apply to the cut out that has been applied to the Bench's fence. The 25 foot triangular visibility area is specifically for the corner where the two streets intersect.

Mr. Halliday asked at what point a fence greater than 3 feet would be allowed. Mr. Wilkinson stated that a fence greater than 3 feet and up to 6 feet would be allowed if there wasn't a driveway within 12 feet on the adjacent property. Just as a note, staff did recommend denial on Mr. Bench's neighbor's fence simply because there is a driveway along the property line. However, the board did grant that variance based on a hardship

and that driveway is a secondary driveway. In this case the driveway on adjoining property is a primary driveway, therefore; staff recommends denial. Mr. Wilkinson stated that a corner lot is different than other lots, specifically when dealing with the corner lot side yard.

Mr. Nay asked how far the setback is for a corner lot. Mr. Wilkinson stated that for the corner lot side yard setback it is 20 feet from the property line. There is a right-of-way that includes the sidewalk and the park strip that is not part of the property.

Mr. Ishino reiterated that the Board does review these cases on their own merit and not by what the outcome was on previous similar cases.

A motion was not brought forth, so the board began discussion.

Ms. Haidenthaller noted there are safety issues and enjoyment of property right issues that should not be ignored. Mr. Halliday reiterated that safety is of concern, but he does not like having fences butting up to the sidewalk.

Mr. Nay stated that good fences make for good neighbors. Mr. Olsen commented that this is difficult due to the fact that it appears Mr. Bench did try to build the fence correctly and to code, but did not interpret the code correctly.

Mr. Halliday noted that having a 3 foot fence does not take the owner's rights away to have a yard or use it; it just limits the use of it. Ms. Haidenthaller added that a 3 foot height fence doesn't help in keeping a dog contained or others from getting in.

Ms. Haidenthaller made a motion to deny the variance request for the fence which has recently been constructed on a corner lot based on review and analysis from staff. Mr. Nay seconded the motion.

Vote recorded by Mr. Beach.

A _____ Mr. Olsen
A _____ Ms. Haidenthaller
A _____ Mr. Halliday
A _____ Mr. Nay
A _____ Mr. Ishino

Motion passed, 5-0. The variance request has been denied.

Mr. Nay made a motion to approve the Findings of Fact as written by Staff. Mr. Halliday seconded the motion.

A voice vote was made. Motion passed, 5-0.

CASE #1460 – BRANDON JENSEN – 602 East 5640 South – Project #12-113

Brandon Jensen was the applicant present to represent this request. Chad Wilkinson reviewed the location and request for a side yard setback variance for an addition onto the existing home. A previous application for a 2 ft. 6 inch side yard and total side yards

of 11 ft. 9 inches variances were denied by the Murray Board of Adjustment at the previous meeting held on August 13, 2012. The applicant has an existing two car carport on the property, but he would like to construct a new two car garage, a main level and second story addition on the existing house. The applicant has submitted a revised application and is now requesting variances for a 2 ft. 6 inch variance on one side for a 5 ft. 6 inch minimum side yard setback and total side yards of 14 ft. 6 inches at the narrowest side yards area. Murray City Code Section 17.100.080.B.C. requires a minimum 8 foot side yard and combined total side yards to be a minimum 20 feet wide. The information obtained from the Salt Lake County Assessor's office indicates the house was built in 1957, but the El-Rancho Subdivision was recorded in 1956. The effective zoning ordinance, which was adopted in 1951, required total side yards of 20 ft. and a minimum of 8 ft. on one side which is the same as the current ordinance. The 1951 ordinance does not have a minimum lot width written in the code at that time. The typical lots widths in the El-Rancho subdivision average between 70 ft. to 75 ft. wide and a few of the lots are narrower at the back of the lots. The applicant has indicated that this lot is one of the narrowest lots in the subdivision with a 62.58 ft. lot width at the back of the lot and is narrower than many other lots in this subdivision at the front of the lot. With a staff survey of the El-Rancho subdivision, there are several illegal carport additions into the required side yards which are more of an enforcement issue. Generally the homes in this area comply with the minimum setback requirements with the exception of the illegal additions. The Murray Power Department planner, Tom Harvey, sent an e-mail stating that a minimum five feet clearance is required from the existing service pole to the addition. The existing secondary triples will need to be relocated underground up to the existing pole and the applicant will need to provide a five foot easement along the west side of the property for Murray Power Department access. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal meets the standards for a variance. Therefore, staff recommends approval with conditions.

Brandon Jensen, 602 East 5640 South, stated that he reviewed the five criteria for granting a variance. He stated that the hardship is created by the lot size and shape of the lot. There are 53 lots in the neighborhood and 80% of the lots are 75 feet or wider. There are only four that taper down in the rear and only one that is 70 ft. in the front, which happens to be his property. All the rest are 75 ft. or wider. In 1951 the zoning ordinance required that the structure be set back a minimum of 20 ft. The dwelling was built approximately 40 ft. from the property line. Had they built it closer to the front property line, there would only be a side yard setback request of 12 inches. Since 1951 there was nothing written as to what the minimum lot width requirements were for that time. Current ordinance requires a minimum 80 foot lot width. The power issue that was brought up in the last meeting is a NEC and IBC code requirement. Mr. Jensen stated that he has met with Tom Harvey on site and has sent an email to Mr. Jensen, Mr. Christensen and Mr. Wilkinson stating that Murray City Power is on board with this plan. Mr. Jensen commented that he spoke with Bruce Turner from the Power Department regarding trees and power lines looking to the future. Mr. Turner indicated to him that once the project moves forward, they will eliminate power pole (A) at the south east corner of the lot and supply power to the neighbor on the east from an alternate pole. The majority of lots in the subdivision would be able to construct such an addition without requesting a variance due to their larger lot widths. Other parcels in the subdivision have been granted variances and multiple properties have added on to and

remodeled both up and out. Mr. Jensen added that this is the same goal he has in order to improve his property and the enjoyment of it. This variance will not be contrary to purpose and goals to the General Plan as it encourages and supports the beautification and improvement of the community. Granting this variance will increase neighborhood safety by removing and updating faulty 1950's wiring which is responsible for fires in many older homes. Mr. Jensen indicated that he has support from his neighbors which gave their approval at the last Board of Adjustment meeting. He stated that granting this variance will be in line with the spirit of the land use and zoning ordinance and the land owner will be able to enjoy the same property rights as others in the area.

Mr. Halliday asked Mr. Wilkinson if the email that Mr. Jensen received constitutes a formal approval from the Power Department. Mr. Wilkinson stated that it's not a formal approval, but the Power Department feels comfortable with the preliminary plan. This issue still needs to go through an approval process.

Mr. Halliday asked Mr. Jensen if the 5 ft. 6 in. in the rear is for the proposed plan. Mr. Jensen responded that the current measurement from the existing structure is 10 ft. 4 in., whereas the plan showing the 5 ft. 6 in. off the property line includes the proposed addition. Mr. Halliday asked Mr. Jensen if he could give a rough estimate as to what the distance will be where the plan is showing 10 ft. 4 in. Mr. Jensen stated it would be approximately 6 ft. 6 in. to 6 ft. 4 in., which changes it about 2 ft. 8 in. from what it was previously proposed. Mr. Jensen explained the reason he wouldn't pull power off of the pole (A) in the southeast corner of the lot is because there isn't an adequate supply running through it. There is an existing triplex from the pole in the southwest (B) corner of the lot, providing sufficient power for his residence to be fed off of that pole with a 200 amp service.

The meeting was opened for public comment.

Dennis Brown, 5655 South 575 East, stated he is the next door neighbor of Mr. Jensen. Mr. Brown asked if there would still be power on the power pole going to his house or would it go underground. Mr. Jensen explained that the underground power would be fed from the power pole (B) in the south west corner of his lot to power pole (C) in the center of the western property line. Power to Mr. Brown's house would be untouched.

The public comment portion for this item was closed.

Mr. Olsen made a motion to approve a variance for a side yard setback for an addition onto the existing home at the property addressed 602 South 5640 South, subject to the following conditions:

1. The minimum side yard setback shall be five ft. six inches at the west side of the property and fourteen ft. six inches total side yards.
2. Comply with Murray Power Department requirements including easements.

Ms. Haidenthaller seconded the motion.

Vote recorded by Mr. Beach.

Board of Adjustment Meeting

September 10, 2012

Page 8

A _____ Mr. Olsen

A _____ Ms. Haidenthaller

A _____ Mr. Halliday

A _____ Mr. Nay

A _____ Mr. Ishino

Motion passed, 5-0.

Mr. Halliday made a motion to approve the Findings of Fact as written by Staff. Mr. Nay seconded the motion.

A voice vote was made. Motion passed, 5-0.

OTHER BUSINESS

There was no other business to discuss.

Meeting adjourned.

Chad Wilkinson, Manager
Community & Economic Development